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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 970

CARMELITA TEVES CARRIAGA,
Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MELVYN E. STEIN,
One North LaSalle Street,
Chicago, Illinois 60602,
332-0005,
Attorney for Petitioner.

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INDEX.

	PAGE
Judgment and Opinion of the Court Below	2
Jurisdiction	2
Statement of the Case	3
Statement of Fact	3-4
Statute Involved	2
Questions Presented	2
Reasons for Granting the Writ	4-6
Conclusion	6
Appendix—Opinion of the Court of Appeals Below	7

Cases Cited.

Mendez v. Major, 226 F. Supp. 364 (1963)	6

Statutes Cited.

Mutual Educational and Cultural Exchange Act of 1961	1
75 Stat. 535	4
75 Stat. 735	5
Section 212(e) of Immigration and Nationality Act (8 U. S. C. 1182(e))	2
Section 212(e) of Immigration and Nationality Act (8 U. S. C. 1282(e))	2-4
Section 241(a)(2) of Immigration and Nationality Act (8 U. S. C. 1251(a)(2))	3
Section 245 of Immigration and Nationality Act (8 U. S. C. 1255)	3
Section 106 of Immigration and Nationality Act (8 U. S. C. 1105(a))	4
28 U. S. C. 1254(1)	2

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Carmelita Teves Carriaga, prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above-case, which rejected her claim that because of the release by the Government of the Philippines she was outside of the scope of the Mutual Educational and Cultural Exchange Act of 1961.

JUDGMENT AND OPINION OF THE COURT BELOW.

Appeal was taken to the United States Court of Appeals for the Seventh Circuit from the entry of an order by the Board of Immigration Appeals in favor of the Respondent, approving the determination of the Special Inquiry Officer.

On the appeal, the Petitioner made a claim that the two year foreign residence requirement as provided in Section 212(e) of the Immigration and Nationality Act (8 USCA 1182(e)) was not applicable once the foreign participating government released the Petitioner from her obligation. The Court of Appeals in the said decision of November 2, 1966 rejected the Petitioner's claim.

The opinion of November 2, 1966 is not as yet reported.

JURISDICTION.

The Order of the United States Court of Appeals for the Seventh Circuit affirming the decision of the Board of Immigration Appeals and rejecting Petitioner's claim was filed on November 2, 1966. This petition is filed within 90 days of that order. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

1. Does the issuance of a release by the participating foreign government place an alien outside of the scope of the two year foreign residence requirement of Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1282(e))?

STATUTE INVOLVED.

Section 212(e) of the Immigration and Nationality Act of 1952 as amended (8 U. S. C. 1182(e)).

STATEMENT OF THE CASE.

This case involved an appeal from the decisions of the Special Inquiry Officer and the United States Court of Appeals for the Seventh Circuit in favor of the Respondent, upholding an order denying the Petitioner's application for adjustment of status under Section 245 of the Immigration and Nationality Act (8 U. S. C. 1255). This petition prays the Court to issue its Writ to review the rejection of the claim made by the Petitioner wherein it was argued that the Government of the United States should give full faith and credit to the release issued by the Government of the Philippines.

STATEMENT OF FACT.

The Petitioner is a 27 year old single female, a native and citizen of the Philippines. She was last lawfully admitted to the United States as a non-immigrant visitor for pleasure at Honolulu, Hawaii on or about May 11, 1965, and since that time has resided in the United States without interruption.

The Petitioner was served with an Order to Show Cause on August 13, 1965 charging her with being deportable under Section 241(a)(2) of the Immigration and Nationality Act (8 U. S. C. 1251 (a)(2) in that she remained in the United States for a longer time than permitted. Therefore, on September 24, 1965 and October 13, 1965, hearings were held before the Special Inquiry Officer. At the hearings the order to show cause was introduced into evidence. The Petitioner admitted all of the factual allegations in the order to show cause and at the conclusion of the question of deportability, the Petitioner applied for adjustment of status under provisions 245 of the Immigration and Nationality Act (8 U. S. C. 1255).

The Petitioner first came to the United States in June of 1962 as a participant in a designated exchange visitor program under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 535) as a physician and she remained in said country under such status until July of 1964. In July, 1964, she left the United States for Australia for further training and in November of 1964 traveled from Australia to the Philippines because of illness in the family, where she resided until May of 1965.

In the course of the hearing, the Petitioner introduced into evidence a release from her exchange visitor commitment executed by the Government of the Philippines.

On October 20, 1965, the Special Inquiry Officer denied the Petitioner's application for adjustment of status on the ground that she was ineligible under the provisions of Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1282(e)). This decision was appealed to the Board of Immigration Appeals and on December 30, 1965, the Board of Immigration Appeals sustained the decision of the Special Inquiry Officer.

A Petition for Review was filed in the United States Court of Appeals for the Seventh Circuit under the provisions of Section 106 of the Immigration and Nationality Act (8 U. S. C. 1105(a)).

REASONS FOR GRANTING THE WRIT.

This Court should exercise its jurisdiction in this case for the following reasons:

1. The reasons for the restrictive foreign residence requirement set forth in Section 212(e) of the Immigration and Nationality Act (8 U. S. C. 1282 (e)) were for the sole and limited purpose of protecting the participating foreign government. Once that government has un-

equivocably released an individual from his duty to return, then the restrictive provisions of the United States Immigration laws must logically and rationally fall.

I.

It is the position of this Petitioner that the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 735) which amended Section 212(e) of the Immigration and Nationality Act is being unduly restricted in its application.

The Immigration and Naturalization Service officials and the Court below seem to be under the misapprehension that upon the expiration of an alien's stay under the Exchange Program, they must return to their country of origin and we have no discretion in keeping them here except under the provisions of Section 212(e) whereby waivers may be granted upon proof of hardship. They do not seem to appreciate the fact that this is a mutual agreement and we have no right to keep these people here without the consent of the participating country involved unless we do so under the hardship provision, but where the participating government in question has waived its right to the return of an exchange visitor, we are then left free to determine for ourselves whether or not such alien is desirable.

Informal estimates by the local Consul General of the Government of the Philippines point out that there are hundreds of qualified doctors and nurses from the Philippines who are in the same identical legal position as the Petitioner in the case at Bar. Our local hospitals are desperately and critically short of trained medical personnel. Although the Record does not reflect it, nevertheless, I think that the Government will stipulate that the Petitioner has never been the beneficiary of any grants

either by the Government of the United States or by the Government of the Philippines. She paid her own way to the United States on the occasions of both of her entries.

The only case in which minutely involved this question is *Mendez* v. *Major,* 226 F. Supp. 364 (1963), at page 367 there was some mention made of the fact that in that case the Government of Mexico did not object to the stay in the United States of Dr. Mendez. However, this fact of this case was not advanced on appeal and that case was argued on the exceptional hardship question only. This case is one involving compelling humanitarian factors not only for the Petitioner and persons similarly situated, but granting the Petitioner the right to remain in the United States would definitely benefit the general welfare of the United States.

CONCLUSION.

Wherefore, for the above and foregoing reasons, we respectfully submit that a writ of certiorari issue to the United States Court of Appeals for the Seventh Circuit to review the decision of that Court rejecting this Petitioner's application for adjustment of status.

Respectfully submitted,

MELVYN E. STEIN,
Attorney for Petitioner.

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

September Term and Session, 1966

No. 15542

CARMELITA TEVES CARRIAGA, *Petitioner,*
vs.
IMMIGRATION AND NATURALIZATION SERVICE, *Respondent.*

Petition for Review of Order of the Immigration and Naturalization Service.

November 2, 1966

Before MAJOR, *Senior Circuit Judge,* and KNOCH and FAIRCHILD, *Circuit Judges.*

PER CURIAM. A special inquiry officer of the immigration and naturalization service denied petitioner's application for adjustment of status under 8 U. S. C. A. sec. 1255, and ordered her deported. She petitioned for review.

The petitioner, Dr. Carriaga, is a physician, and a citizen of the Philippines. She last entered the United States in May, 1965 as a nonimmigrant visitor for pleasure, and has remained beyond the permitted period. In that status, she is deportable.

She first came to the United States in June, 1962 as an exchange visitor under the Mutual Educational and Cul-

tural Exchange Act of 1961 (75 Stat. 535). She left in July, 1964. She spent part of her ten months of absence from the United States in Australia and part in the Philippines.

Because Dr. Carriaga entered the United States as an exchange visitor and has not, since her departure, been physically present in the Philippines (or in another foreign country under specified circumstances) for an aggregate of two years, 8 U. S. C. A. sec. 1182(e), by its terms, bars her present application.

It appears that the Philippine government has released Dr. Carriaga from any obligation to return to that country. Her counsel argues that the two-year requirement was intended for the benefit of the Philippines and that such release effectively disposes of it. He urges that the United States needs physicians. It may well be that it would be in the public interest to permit a physician to remain in this country and render services under these circumstances, but the statute contains no provision permitting that result.

The order under review is

AFFIRMED.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 970

CARMELITA TEVES CARRIAGA, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, a native of the Philippines, lawfully entered the United States as an exchange visitor under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 535) in June 1962. She was an intern in the United States until July 1964, when she travelled to Australia for further training. In November 1964, she returned to the Philippines. In May 1965, she entered the United States as a nonimmigrant visitor for pleasure and has since remained in this country (R. 23-26, 29).

On August 13, 1965, petitioner was served with an order to show cause charging her with being deportable in that she remained in the United States for a longer time than permitted by law (R. 24). At hearings before the Special Inquiry Officer, petitioner admitted all of the factual allegations in the order to show cause, including the fact that she was presently deportable (R. 15), but applied for adjustment of status under the provisions of Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) (R. 16).[1] On October 20, 1965, the Special Inquiry Officer denied petitioner's application for adjustment on the ground that petitioner did not satisfy the statutory requirement that she be "eligible to receive an immigrant visa and * * * admissible to the United States for permanent residence" (note 1, *supra;* R. 21). Petitioner, he found, was ineligible under Section 212(e) of the Act, 8 U.S.C. 1182(e), which provides that any person who was admitted to the United States as a "bona fide student, scholar, trainee * * * coming temporarily to the United States as a participant in a program designated by the Secre-

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[1] Section 245 provides, in pertinent part:

(a) The status of an alien, other than an alien crewman, who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved.

tary of State, for the purpose of teaching * * * or receiving training * * *" is ineligible for an immigrant visa "until it is established that such person has resided and been physically present in the country of his nationality or his last residence, or in another foreign country for an aggregate of at least two years following departure from the United States." The officer held that the ineligibility was applicable even though the Philippine government had released petitioner from her exchange-visitor commitment (R. 21, 35). On December 30, 1965, the Board of Immigration Appeals sustained the decision of the Special Inquiry Officer (R. 1-3). On petition for review, the court of appeals affirmed (Pet. App. A).

Petitioner contends that Congress did not intend to apply the restrictive provisions of Section 212(e) when the country from which the exchange student has entered has executed a release from any commitments to that country. Congress, however, provided no such exception in the statute. The legislative history of the Mutual Educational and Cultural Exchange Act of 1961 and its predecessor (which placed a similar restraint on exchange students entering the United States under the provisions of the United States Information and Educational Exchange Act of 1948 (62 Stat. 6)), shows that the purpose of the restriction was to promote a policy whereby "those individuals who are brought to the United States will return either to their own or another cooperating country to impart to their friends and the society in which they live impressions of the United States and its culture." S. Rep. No. 1608, 84th Cong., 2d Sess.,

p. 2, 1956 U.S. Code Cong. and Adm. News 2662-2663; see also remarks of Rep. Walter, 105 Cong. Rec. 1952-1953; Gordon and Rosenfield, *Immigration Law and Procedure* (1959), Section 6.8g, pp. 650-652. That policy is not furthered by admitting one who, like petitioner, has not resided abroad for two years. Section 212(e), in unequivocal terms, renders petitioner ineligible for a visa since she failed to reside in another cooperating foreign country for an aggregate period of at least two years after departure from the United States. Hence the discretionary remedy authorized by Section 245 is unavailable.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
LAWRENCE P. COHEN,
Attorneys.

FEBRUARY 1967.

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